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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Gabriel D., a Person  
Coming Under the Juvenile  
Court Law.

B294492

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Los Angeles County  
Super. Ct. No.  
18CCJP06036

Plaintiff and Respondent,

v.

Steven D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Pete Navarro, Juvenile Court Referee.  
Affirmed in part. Remanded.

Joseph T. Tavano, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, Brian Mahler, Deputy County  
Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Appellant Steven D. (Father)<sup>1</sup> brings this appeal challenging jurisdictional and dispositional orders based on alleged noncompliance with the notice provisions of the Indian Child Welfare Act of 1978. (ICWA; 25 U.S.C. § 1901 et seq.) The Los Angeles County Department of Children and Family Services (the Department) argues ICWA does not apply to cases such as this one, where the juvenile court does not place the child in foster care or an adoptive home. We affirm the jurisdictional and dispositional orders, but remand the matter to the juvenile court with directions to order the Department to comply with the inquiry and notice provisions of ICWA.

## FACTUAL AND PROCEDURAL BACKGROUND

### **A. Dependency Petition, Detention, and Initial Indian Status Reporting**

On September 19, 2018, the Department filed a petition under Welfare and Institutions Code section 300<sup>2</sup> on behalf of Father's child Gabriel (born November 2014).<sup>3</sup> The petition

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<sup>1</sup> Father Steven D. has a son Steven who is also discussed in this opinion. For clarity, Steven D. will be referred to as Father and his son will be referred to as Steven.

<sup>2</sup> All undesignated statutory references are to the Welfare and Institutions Code.

<sup>3</sup> The department also filed petitions regarding Gabriel's three half-siblings, Jose T., Enrique T., and Mario T., none of whom are parties to this appeal.

alleged Father and Deserie M. (Mother)<sup>4</sup> had a history of engaging in violent altercations in the presence of Gabriel; on one occasion Father repeatedly struck Mother in the face while she held Gabriel; Father had a criminal history of convictions for contempt, violating protective orders, and drug offenses; Father used illicit drugs including methamphetamine; Gabriel's siblings were prior dependents due to domestic violence between Father and Mother; and Mother failed to protect Gabriel by allowing Father unlimited access to him.<sup>5</sup>

On September 20, 2018, Mother and Father filed "Parental Notification of Indian Status" forms (ICWA-020 forms) stating they had no Indian ancestry as far as they knew. That same day, the juvenile court held a detention hearing, both parents stated they did not have any Indian ancestry as far as they knew, and the court found ICWA did not apply. The court found the Department had made a prima facie showing Gabriel was a person described in section 300 and ordered him detained and placed with his grandmother.

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<sup>4</sup> Mother is not a party to this appeal.

<sup>5</sup> The Department later filed an amended petition adding allegations that Father was a member of a street gang; had an unresolved history of dangerous criminal activity and convictions, including a conviction as recent as 2018; and Father had failed to reunify with one of his other children, Steven, which resulted in Steven receiving permanent placement services.

## **B. The Department's ICWA Follow-up with Juvenile Court**

On October 12, 2018, the Department reported on an ICWA investigation in a concurrent dependency proceeding that involved Father's child Steven, Gabriel's paternal half-brother. The department reported: "The court is respectfully informed that there was a recently completed ICWA investigation in the father's other son's case, Steven . . . .The paternal family claimed possible Apache and Navajo heritage. This DI is assigned to that case and has completed a thorough inquiry and has received responses from over half the tribes that the half-sibling Steven . . .is not eligible for enrollment. As of the next court hearing (10/22/18) the required 60 days will have passed and the Department is recommending that the court find that ICWA does not apply to that case. Therefore, the Department continues to support the order made on 09/20/18 that ICWA does not apply in this case." The Department did not send notice to the tribes that Gabriel was involved in juvenile court proceedings.

## **C. Jurisdiction and Disposition Hearing**

On December 7, 2018, the juvenile court held a combined jurisdiction and disposition hearing. The court assumed jurisdiction over Gabriel, declared him a dependent of the court, removed him from Father's custody, and placed him in Mother's home. Mother was ordered to participate in maintenance services, including a victims of domestic violence program, a parenting education program, and individual counseling. Father was ordered to participate in enhancements services, including a perpetrators of domestic violence program, an anger

management program, and monitored visitation with Gabriel. A judicial review hearing was then set for May 2019.

Father timely appealed.

## DISCUSSION

Father contends we must reverse the juvenile court's dispositional orders because the Department did not comply with ICWA. The Department counters we need not reverse since ICWA does not apply, or alternatively, assuming ICWA does apply, the appropriate remedy is a limited remand to the juvenile court with directions to comply with ICWA's inquiry and notice provisions.

ICWA "protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions." (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1197.) "To that end, specific notice requirements to the applicable tribes are triggered when the juvenile court knows or has reason to know that an Indian child is involved in a dependency proceeding. (25 U.S.C. § 1912(a).)" (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 56.) The notices serve the dual purposes of facilitating the tribes' determination of the child's membership and ensuring their awareness of their right to intervene in the proceedings should the child qualify for membership. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.)

If the juvenile court knows or has reason to know that a child may be an Indian child, ICWA requires that the party seeking foster care placement send notice to the appropriate tribes or, if a tribe's identity is uncertain, to the Secretary of the Interior. (25 U.S.C. § 1912(a).) The court and the party seeking foster care placement "have an affirmative and continuing duty

to inquire whether a child . . . is or may be an Indian child.” (§ 224.2, subd. (a); see also Cal. Rules of Court, rule 5.481(a).) The Department in this case sought foster care placement of Gabriel.

“The determination of a child’s Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement.” (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) “Given the interests protected by [ICWA], the recommendations of the [federal] guidelines, and the requirements of our court rules, the bar is indeed very low to trigger ICWA notice.” (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408.) That low bar was met here when the Department found out the paternal family of Gabriel’s half-brother Steven claimed possible Apache and Navajo heritage.

We reject the Department’s argument that Gabriel’s eventual placement with Mother rendered ICWA inapplicable. The notice requirements of ICWA apply to any proceeding that may culminate in “[f]oster care placement, which includes removal of an Indian child from his or her parent, parents, or Indian custodian for placement in a foster home, institution, or the home of a guardian or conservator, in which the parent or Indian custodian may not have the child returned upon demand, but in which parental rights have not been terminated.” (§ 224.1, subd. (d)(1)(A); see § 224.3, subd. (a); 25 U.S.C. §§ 1903(1), 1912(a).) ICWA therefore applies here for two reasons. First, although Gabriel was placed with his mother at the jurisdictional and dispositional hearing, at the detention hearing he was removed from his parents and placed with his grandmother. Second, throughout the proceedings the Department’s recommendation was that Gabriel be removed from both parents’

custody and remain placed with his maternal grandmother. (See *In re Alexis H.* (2005) 132 Cal.App.4th 11, 14 [“By its own terms, [ICWA] requires notice . . . when child welfare authorities seek permanent foster care or termination of parental rights . . . .”].) We therefore reject the Department’s argument that ICWA is inapplicable.

### **DISPOSITION**

We affirm the jurisdictional and dispositional orders of the juvenile court. The matter is remanded to the court with directions to order DCFS to comply with the inquiry and notice provisions of ICWA. If, after proper notice, it is determined that Gabriel is an Indian child and ICWA applies to these proceedings, a party or tribe may petition the juvenile court to invalidate orders that violated ICWA.

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CURREY, J.

WE CONCUR:

MANELLA, P. J.

COLLINS, J.